IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2473 OF 2005

Raghuram Shetty : Petitioner

V/s.

Smt.Radhika Ramesh Dev (Moily) : Respondent

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Mr.M.G.Menon with Mr.Ashok Mishra for the petitioner.

Mr.P.J.Pawar for the respondent.

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CORAM : S.A. BOBDE, J.

June 28, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Pawar, learned counsel, appears and waives service of rule on behalf of the respondent.

Heard by consent.

2. The defendant has challenged the grant of conditional leave to defend the summary suit filed by the respondent under Order 37 of the C.P.C. The respondent has sued the petitioner for the unpaid price of the vehicles delivered to him. The suit is for a sum of approx. Rs.30.48 lakhs. The petitioner has been ordered to deposit 50% of the claim amount within two months from the date of the order

i.e. from 17.1.2005.

3. Mr.Menon, learned counsel for the petitioner, submitted that the respondent is not even the owner of the vehicles and, therefore, the petitioner ought to have been granted conditional leave to defend. On the other hand, it is submitted by Mr.Pawar, the learned counsel for the respondent, that the petitioner has categorically admitted the ownership of the respondent or the vehicles in the recitals of the agreement under which he purchased the vehicles. The observations of the lower Court that the ownership of the vehicle is admitted by the petitioner is referable to the agreement, even though it may not be referable to any pleadings.

4. It, however, appears from the record that the petitioner has issued cheques to the respondent presumably for the payment of the vehicles. The cheques were not honoured. According to me, it is not relevant why the respondent failed to secure a conviction of the petitioner under the Negotiable Instruments Act for dishonour of the cheques while deciding the question of leave to defend the suit. Having regard to the overall circumstances of the case and having regard to the fact that the petitioner used the vehicles at least from 1999, I see no reason to

interfere with the order of granting conditional leave to defend. All questions on merits are left open.

5. The petition is dismissed. The rule stands discharged. No order as to costs.

S.A. BOBDE, J.